BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LUCINDA HOOVER)
Claimant)
VS.)
) Docket No. 258,403
FOOD 4 LESS)
Respondent)
AND)
LIDERTY MUTUAL INCUDANCE COMPANY)
LIBERTY MUTUAL INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent and its insurance carrier appealed the November 1, 2000 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

Issues

This is a claim for low back and right lower extremity injuries that allegedly began on March 15, 2000, and continued to develop each and every day that claimant worked after that date. After conducting a preliminary hearing on October 31, 2000, Judge Howard awarded claimant medical benefits.

Respondent and its insurance carrier contend Judge Howard erred. They argue that claimant failed to prove that she sustained personal injury by accident arising out of and in the course of employment with respondent. Therefore, they request the Appeals Board to reverse the preliminary hearing Order. Conversely, claimant requests the Board to affirm the Judge's Order.

The only issue before the Board on this review is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.

- 2. Claimant works for respondent as a meat cutter's helper. Claimant testified that on March 15, 2000, she slipped on a wet floor while twisting to grab a squeegee. Claimant felt an uncomfortable feeling in her right hip when she slipped but that feeling soon subsided. The incident occurred at the end of claimant's workday while she was cleaning equipment in respondent's meat department.
- 3. The next day claimant reported the incident to a supervisor, Chuck Wilson. After working eight hours that day, when she went home claimant noticed an "achy feeling" in the right side of her low back. As claimant's symptoms were initially minimal, she did not request medical treatment and continued to work. But approximately two weeks later, claimant began having a burning sensation in her right leg. Because of other health problems, claimant feared that she was having signs of a stroke.
- 4. Before the March 15, 2000 incident, claimant had scheduled an appointment to see her personal physician, Dr. Jana Jones. When claimant saw Dr. Jones on April 11, 2000, she was experiencing minor symptoms in the low back but she was primarily worried about the symptoms in her right leg. The doctor recommended x-rays, which were taken on May 3, 2000. At their next appointment on May 17, 2000, the doctor and claimant discussed the x-rays, which indicated degenerative changes in the lumbar spine and mild L5-S1 neural foraminal encroachment on the left side. The doctor then recommended an MRI. At that visit claimant and the doctor discussed the March 15, 2000 incident at work and whether that may have caused the symptoms that claimant was experiencing.
- 5. On May 18, 2000, claimant reported Dr. Jones' opinions to her supervisors. Respondent then completed an accident report. Later, claimant was notified that respondent's workers compensation insurance carrier was denying her claim. Despite ongoing symptoms, claimant continued to work for respondent and in June 2000 began having increased low back symptoms while filling an open deep freeze with meat. Claimant reported that incident to a supervisor, Archie Raycine. At the time of the preliminary hearing, claimant was continuing to work and taking pain medications that had been prescribed by Dr. Jones. Claimant notes that the lifting, bending, and twisting that she does at work exacerbates her symptoms.
- 6. Claimant had not experienced either low back or right lower extremity symptoms before the March 15, 2000 incident. Further, claimant is unaware of any incident or accident outside of work that may have injured her back or leg.
- 7. The Board affirms the Judge's implied finding that claimant injured her low back and right lower extremity while working for respondent. The Board finds, for preliminary hearing purposes, that claimant's testimony is credible and persuasive. The Board concludes that it is more probably true than not true that claimant injured her low back and right lower extremity while working for respondent and, therefore, claimant is entitled to receive workers compensation benefits for those injuries.

WHEREFORE, the Appeals Board affirms the November 1, 2000 preliminary hearing Order entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS John F. Carpinelli, Topeka, KS Steven J. Howard, Administrative Law Judge Philip S. Harness, Director